

SEP 14 2006

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

LUIS ALBERTO ORRANTIA-LUNA,

Defendant - Appellant.

No. 05-10580

D.C. No. CR-04-02085-DCB

MEMORANDUM*

Appeal from the United States District Court
for the District of Arizona
David C. Bury, District Judge, Presiding

Submitted September 11, 2006**

Before: PREGERSON, T.G. NELSON, and GRABER, Circuit Judges.

Luis Alberto Orrantia-Luna appeals from the 46-month sentence imposed following his conviction for possession with intent to distribute methamphetamine

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

and importation of methamphetamine. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

Appellant contends that he should have received a downward adjustment under U.S.S.G. § 3B1.2(a) for being a minimal participant in the offense. We conclude that the district court did not clearly err by determining that appellant was entitled to a downward adjustment for his minor role in the offense, but not to a further downward adjustment for minimal role. *See United States v. Littlesun*, 444 F.3d 1196, 1201 (9th Cir. 2006).

Appellant also contends that he should have received a downward departure under the Guidelines for aberrant behavior. The district court correctly concluded it could not depart downward based on aberrant behavior because appellant's convictions are for serious drug offenses. *See* U.S.S.G. § 5K2.20(c)(3).

We will not consider appellant's contention under *United States v. Booker*, 543 U.S. 220 (2005), because he raised this contention for the first time in his reply brief. *See United States v. Romm*, 455 F.3d 990, 997 (9th Cir. 2006).

AFFIRMED.